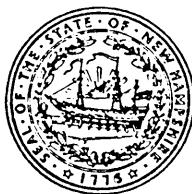


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STATE HOUSE ANNEX

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CONCORD, NEW HAMPSHIRE 03301-6397

December 20, 1983

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Mr. William S. Tassie
N.H. Liquor Commission
Storrs Street
Concord, New Hampshire 03301

Dear Mr. Tassie:

This letter is in response to your memorandum of December 1, 1983, requesting an opinion as to whether a restaurant which has its kitchen separated from the dining area by a public passageway meets the requirements of RSA 181:1, V. In subsequent telephone conversations with you and with the Chairman of the Commission, you have indicated that this inquiry arises in connection with a specific request for a license by an establishment in Eagle Square in Concord. By letter, the attorney for the restaurant in question has indicated that the restaurant would be able to lease the section of the public passageway between the kitchen and dining area, granting an easement back to the lessor permitting public passage. We therefore assume that the proposed lease arrangement is the basis for the license application and our opinion is based upon that arrangement. In our opinion, the arrangement would satisfy the requirement of RSA 181:1, V.

Your inquiry necessarily focuses on the phrase "connected therewith" in RSA 181:1, V. The applicant in question is Amigo's Restaurant and Cafe in Concord. As the attached drawing indicates, the restaurant has two sections. One section includes the kitchen and a counter for take-out sales. Across a common hallway is a Cafe which includes a dining area and a service bar. Liquor would be served from the service bar directly to Cafe patrons without crossing the common area. Food ordered at the Cafe would be prepared in the kitchen and brought across the hallway to the Cafe.



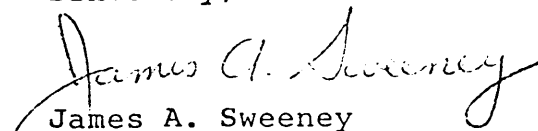
RSA 181:1 defines a restaurant as:

"V. 'Restaurant,' any room regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation which has suitable accommodations for seating at least 20 guests therein at one time subject to approval of the commission and a kitchen connected therewith containing conveniences for cooking sufficient to provide meals in a bona fide manner for 20 guests at one time and shall include dining cars and vessels meeting such requirements."

Thus, in order to receive a liquor license as a restaurant, there must be a bona fide dining area and a kitchen must be "connected therewith." This language does not necessarily require a kitchen to be physically attached to a dining area to meet the definition of "restaurant." In our opinion, the requirement of RSA 181:1, V would be fully satisfied by the applicant's lease of the portion of the common hallway between the kitchen and the Cafe. The operation of the restaurant would be under one roof and under the control of the applicant. In addition, since a restaurant may hold an on-sale permit only, under RSA 181:4 and 181:5, any liquor license granted to Amigo's Restaurant and Cafe should clearly indicate that liquor is to be served only in the Cafe dining area and not at the take-out counter.

I trust that this has been responsive to your question. If you have any further questions, please feel free to contact me.

Sincerely,


James A. Sweeney
Attorney
Division of Legal Counsel

JAS:alh
#83-157-I
cc: Jean R. Wallin, Chairman